

LEASE #393

AUG 26 1975-9 05 AM

INTERSTATE COMMERCE COMMISSION

Agreement of Lease dated the 17th day of June 1975, by and between Bay Aviation Company, a Michigan corporation, located at 120 Oak Street, Tawas City, Michigan (hereinafter sometimes referred to as "Lessor") and Detroit & Mackinac Railway Company, a corporation organized under the laws of the State of Michigan (hereinafter sometimes referred to as "Lessee").

WHEREAS, Lessee desires to lease from Lessor and Lessor desires to lease to Lessee a certain item of railroad equipment, hereinafter more specifically described, pursuant to the terms and conditions set forth in this lease.

THEREFORE, it is agreed as follows:

1. Lease of Property. Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the following described railway equipment:

See Description Attached.

2. Delivery of Equipment. Lessor shall deliver Property to Lessee at its railway yard in Tawas City, Michigan. All freight charges incurred in delivery of said Property shall be paid by Lessor.

3. Inspection and Acceptance. Inspection shall be made by Lessee within five (5) days from the time of delivery of Property at Tawas City, and Lessee shall have the right to accept or reject the Property as to condition within said five (5) day period. If not so rejected, the Property is deemed accepted as to condition by Lessee.

4. Use and Possession. Throughout the continuance of this lease, so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of Property and may use such Property:

(a) on its own line of railroad; and

(b) upon the lines of other railroad in the usual interchange of traffic for such compensation as Lessee may determine, but at all times subject to the terms and conditions of this lease;

provided, however, that the Property shall be used in a careful and prudent manner solely for the use for which it is designed.

5. Terms. The term of this lease shall be for five (5) years.

6. Option to Extend. Unless Lessee is in default under the provisions of this lease, Lessee shall have an option to extend the Original Term of this lease upon the same terms and conditions as to all or any portion of the Property then subject to this lease by notifying Lessor in writing no less than ninety (90) days and no more than six (6) months prior to the end of the original term. An extension with respect to Property shall be for a period (hereinafter referred to as the "extended term") of one (1) month from the end of the original term and shall automatically continue without further act by either party (from month to month thereafter) until termination of the lease with respect to such Property.

- (a) By written notice from Lessee to Lessor on/or before the last day of any month during the extended term stating that the lease is cancelled as to such Property as of the last day of the next contract month; or
- (b) By Lessor on account of default by the Lessee; or
- (c) By expiration of fifteen (15) years from the date of this lease.

7. Rental. Lessee shall pay to Lessor as rental for the Property during the Original Term of this lease or any extension thereof, the following rental:

(See Attachment A hereto, which is incorporated herein by reference).

8. Payment. All rental payments, as well as any other payments required to be made by Lessee to Lessor shall be made to Lessor at its office located at 120 Oak Street, Tawas City, Michigan or such other place as Lessor may direct. Rental payments for each calendar or partial calendar month shall be made on or before the 10th day of the succeeding calendar month.

9. Title. Lessor has or will have title to the Property and it shall at all times remain and be the sole and exclusive property of Lessor. Lessee shall have no right or title in the Property except the rights herein expressly granted to it as Lessee.

10. Maintenance. The Property shall be maintained in good working order and repair by Lessee according to the Code of Rules governing the condition of such equipment adopted by the Association of

American Railroads, Operations and Maintenance Department, Mechanical Division (hereinafter referred to as "AAR-Interchange Rules"), current as of the date such maintenance or repairs are performed, and to comply with any acts of Congress and/or the rules of any other body promulgating rules pertaining thereto now or thereafter in force during the duration of this lease.

Lessee shall pay all bills for any maintenance or repair work performed to the Property by the Lessee.

Lessee shall have the right to return the Property if it is in need of repairs, replacement or maintenance, and Lessee, in its sole opinion, deems it uneconomical to repair or continue the Property under this lease. Lessor may, if it elects, replace the Property withdrawn from this lease as permitted herein (or which is destroyed, damaged or lost as provided in Paragraph 16 hereof) with Property of like or similar specifications and said replacement shall be deemed to be Property subject to all terms and conditions of this lease as if the same had been originally delivered to Lessee at the time and in the place of the Property for which same is substituted. The parties agree to execute and file for record such other or further documents as may be necessary to include any such substituted Property within the terms and provisions of this lease and of any other document under the terms of which Lessor has assigned its rights hereunder as permitted in Paragraph 20 hereof.

11. Taxes and Other Levies. Lessee shall, during the continuance of this lease, promptly pay all taxes, assessment and other governmental charges, including sales, use or ad valorem taxes levied or assessed upon the Property or the interest of the Lessee herein or any thereof, or upon the use or operation thereof or the earnings arising therefrom, and if any levy or assessment is made against Lessor on account of any of the foregoing matters, exclusive, however, of any taxes on the rentals herein provided, (except any such tax on rentals which is in substitution for, or relieves the Lessee from, the payment of taxes which it would otherwise be obligated to pay or reimburse as hereinbefore provided). Lessee will promptly pay or reimburse Lessor for same; but the Lessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceeding contest the validity or amount thereof unless thereby, in the judgment of Lessor, the rights or interest of Lessor will be materially endangered. In the event that any tax reports are required to be made on the basis of Property, the Lessee will either make such reports in such manner as to show the ownership of such Property by Lessor or will notify Lessor of such requirements and will make such reports in such manner as shall be satisfactory to Lessor.

12. Liens. Lessee shall, during the continuance of this lease, keep the Property free from any encumbrances or liens which may be a cloud upon or otherwise affect Lessor's title and shall promptly

discharge any legal process which may be levied upon the Property in any action provided such encumbrance, lien or action shall arise out of any act or omission of Lessee or its failure to comply with the provisions of this lease, and provided further, that the Lessee need not discharge any such legal process against Lessor except as may be required by Paragraph 13 hereof.

13. Indemnity. Lessee agrees to indemnify and save harmless Lessor against any charge or claim made against Lessor and against any expense or liability which Lessor may incur by reason of its ownership of any Property while it is subject to this lease, in any manner arising out of or as a result of the use or operation of such Property, and to indemnify and save harmless Lessor against any claim or suit on account of any accident in connection with the operation of such Property resulting in damage to property or injury to any person, including specifically but not exclusively, (a) the condition (including without limitation, latent and other defects and whether or not discoverable by Lessor) or operation of Property regardless of by whom used or operated; and (b) any act or occurrence arising out of the repair or maintenance of any Property. The indemnities and assumptions of liability herein contained shall survive the termination of this lease. Lessor shall, upon learning of same, give the Lessee prompt notice of any claim or liability hereby indemnified against.

14. Car Marking. Property, upon delivery, will be distinctly, permanently and conspicuously marked in stencil with the number of such Property according to the numbers assigned by Lessee in Paragraph 1 hereof, and with a legend on each and in letters not less than three-quarters inch (3/4") in height substantially as follows:

PROPERTY OF

BAY AVIATION COMPANY

OWNER AND LESSOR

DETROIT BANK & TRUST COMPANY

DETROIT, MICHIGAN

MORTGAGEE

Lessee shall immediately replace any such stenciling which may be removed, destroyed or becomes illegible wholly or in part, Lessor shall furnish all stencils required for such use at its own cost and expense. Except for the numbering and stenciling as provided herein, and such markings as Lessee desires to indicate its interest hereunder, Lessee shall keep the Property free from any marking or labeling which might be interpreted as a claim of ownership hereof by Lessee, or any other party other than Lessor.

15. Inspection-Inventory. During the continuance of this lease, Lessor shall have the right at its own cost and expense to inspect the Property at any reasonable time, or times, whether on Lessee's line or elsewhere. Lessee shall at least once every year, furnish to Lessor two (2) copies of an accurate inventory of Property in service.

16. Loss or Destruction of Property. In the event Property lost, stolen, destroyed or damaged beyond economical cost of repair whether or not on Lessee's line or on any handling line, Lessor shall receive from Lessee payment on account of such Property in the amount and in the manner provided in the AAR-Property Rules.

17. Return of Property. Upon the expiration or termination of this lease with respect to Property (except as otherwise provided in Paragraph 16 hereof), the Lessee shall forthwith deliver possession of such Property to Lessor in condition satisfactory for service under Association of American Railroads Rules, at the Tawas City station of Lessee. Until surrender or taking possession of Property as provided in this paragraph, the Lessee shall continue to pay rental at the rate being paid immediately prior to termination or expiration, and Lessee shall with respect to such Property, make all other payments and keep all obligations and undertakings required of Lessee under Paragraphs 4, 7, 8, 10, 11, 12, 13, 14, 15, 16 and 17 hereof.

18. Default. Upon the happening of any of the following events, the Lessee shall be in default of the terms and provisions of this lease:

- (a) nonpayment by the Lessee within thirty (30) days after the same becomes due of any installment of rental hereunder.
- (b) making or permitting any unauthorized assignment of transfer of this lease or of possession of the Property, or any thereof, and failure or refusal to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Property within thirty (30) days after written notice from Lessor to Lessee demanding such cancellation and recovery of possession.
- (c) failure of Lessee to comply with or perform any of the other terms and conditions of this lease within thirty (30) days after written notice from Lessor to Lessee demanding compliance therewith and performance thereof,
- (d) a decree or order by a court having jurisdiction in the premises shall have been entered
  - (i) adjudging Lessee a bankrupt or insolvent, or;

(ii) approving as properly filed a petition seeking reorganization of Lessee under the Bankruptcy Act or any other state or Federal law relating to bankruptcy or insolvency, or;

(iii) for the appointment of a receiver or trustee in bankruptcy or insolvency of Lessee or of its property or any substantial portion of its property, and within sixty (60) days thereafter (or in case, prior to the end of such sixty (60) day period, a temporary or permanent receiver or trustee shall have been appointed in such proceedings then within sixty (60) days after Lessor shall have demanded in writing that such receiver or trustee take action to assume or reject this lease), the obligations of Lessee under this lease shall not have been assumed by the receiver or trustee in such proceedings, pursuant to an order or decree of such court or otherwise, in such manner that they shall have been given a status comparable to that of those obligations incurred by a receiver or trustee in bankruptcy or insolvency proceedings which cannot later be rejected by a plan of reorganization.

19. Remedies. Lessor shall have all rights and remedies now or hereafter provided by law for the repossession of the Property and for the recovery of damage occasioned by Lessee's default. Without in any way limiting the generality of the foregoing, Lessor shall, in the event of a default by Lessee, have the following additional rights and remedies, which rights and remedies or any of them shall not be deemed exclusive. Lessor may at its option:

(a) elect only to terminate the Lessee's right of possession (but not to terminate the lease), without releasing Lessee in whole or in part from its obligations hereunder for the remaining term of the lease, and thereupon, to take possession of any or all of the Property wherever same may be found, and relet the same of any part thereof to others for such rent and upon such terms as it may see fit. The proceeds of any such reletting shall first be applied to the expense of retaking and reletting of the Property and delivery to the new lessee, and then to the payment of rent due under this lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. Lessor shall not be required to accept or receive any lessee offered by Lessee. The election by Lessee to relet the Property and the acceptance of a new lessee, shall not operate to release Lessee from liability for any existing or future default in any covenant or promise herein contained.

(b) seek to recover from Lessee any and all damages or expenses including reasonable attorney's fees, which Lessor shall have sustained by reason of Lessee's default in any covenants of this lease other than for payment of rental or on account of Lessor's enforcement of its remedies hereunder,

(c) seek to recover or take possession of any or all of the Property wherever same may be found.

(d) seek to recover from the Lessee any and all amounts which under the terms of this lease may be then due or which may become due and unpaid, including rentals accruing hereunder after the date of default, for the use of the Property and also to recover forthwith from the Lessee if the term has not expired, as damages for loss of the bargain and not as a penalty, a sum, with respect to Property then subject to this lease which represents the excess of the present worth, at the time of such termination of all rentals for Property which would otherwise have accrued hereunder from the date of such termination to the end of the term as to such Property for such period over the then present worth of the fair rental value of such Property for such period, such present worth to be computed in each case on the basis of five (5%) percent per annum discount, compounded monthly, from the respective dates upon which rentals would have been payable hereunder had this lease not been terminated.

20. Assignment.

(a) All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with or without notice to Lessee, but subject to Lessee's rights under this lease. If Lessor shall give written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rental and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee. The rights of any assignee or any party or parties on behalf of whom such assignee is acting shall not be subject to any defense, set off, counterclaim or recoupment whatsoever whether arising out of any breach of any obligation of Lessor hereunder or by reason of any other indebtedness or liability at any time owing by Lessor to the Lessee.

(b) Lessee shall not assign this lease without the written consent of Lessor, provided, however, that Lessee may assign all of its rights under this lease to another railroad corporation which succeeds to all or substantially all of the business of the Lessee provided that such successor assumed all of the obligations of the Lessee hereunder. Lessee shall have the right to sublease any of the Property subject to the terms hereof. No assignment or subleasing by Lessee shall serve to relieve Lessee of its obligations hereunder.

21. Opinion of Counsel. Upon the request of Lessor or its assignee at any time or times, Lessee will deliver to Lessor an opinion of counsel for Lessee addressed to Lessor or its assignee in form and substance satisfactory to counsel for Lessor, or its assignee, which opinion shall be to the effect that:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation and has corporate power to enter into this lease and carry out its obligation thereunder;





24. Governing Law-writing. The terms of the lease and all rights and obligations hereunder shall be governed by the laws of the State of Michigan. The terms of this lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

25. Counterparts. This lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart.

26. Severability-Waiver. If any term or provision of this lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this lease or the application of such term or provision, to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this lease shall be valid and be enforced to the fullest extent permitted by law. Failure of Lessor to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

27. Terminology. In construing any language contained in this lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so required, the singular shall include the plural and vice versa.

28. Past Due Rental. Anything to the contrary herein contained notwithstanding, any nonpayment of rental due hereunder, whether during the thirty (30) day period within which a default may be cured or for a longer period and whether or not deemed a default or violation of this lease, shall result in the obligation on the part of the Lessee to pay also an amount equal to six (6%) percent per annum (or, if such rate may not be lawfully charged, then the highest rate which may lawfully be charged) of the overdue rentals for the period of time during which they are overdue.

29. Benefit. The covenants, conditions and agreements shall bind and inure to the benefit of the parties, their successors and assigns (to the extent permitted in Paragraph 20 hereof) and the term Lessor and the term Lessee shall mean, respectively, all of the foregoing person who are at any time bound by the terms hereof, or who are entitled to claim the benefit of the terms hereof, without limiting the generality of the foregoing, and the indemnities of the Lessee contained in Paragraph 13 hereof shall apply to and inure to the benefit

of any assignee of Lessor and, if such assignee is the Trustee under an indenture under which Notes of Lessor have been issued in connection with the financing of the cars, then to any holder of such notes.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this lease as of the day and year first above written.

BAY AVIATION COMPANY  
a Michigan Corporation

By Charles A. Pinkerton Jr.

ATTEST: Shirley R. Luedtke Its President

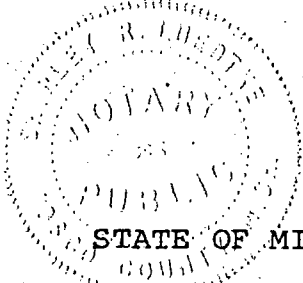
DETROIT AND MACKINAC RAILWAY CO.  
A corporation organized under the laws of the State of Michigan

By Shirley R. Luedtke

ATTEST: Shirley R. Luedtke Its President

STATE OF MICHIGAN)  
COUNTY OF Iosco ) ss.

On this 25<sup>th</sup> day of July, 19 75, before me personally appeared Charles A. Pinkerton Jr., to me personally known, who being by me duly sworn, says that He is President of Bay Aviation Company, that the seal affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.



STATE OF MICHIGAN)  
COUNTY OF Iosco )

Shirley R. Luedtke  
Notary Public, Iosco County, Mich.

My Commission Expires:

SHIRLEY R. LUEDTKE  
Notary Public, Iosco County, Michigan  
My Commission Expires June 18, 1977

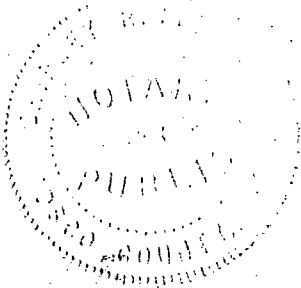
On this 25<sup>th</sup> day of July, 19 75, before me personally appeared E. V. Goodman, to me personally

known, who being by me duly sworn, says that he is the President of the Detroit and Mackinac Railway Company, that the seal affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Shirley R. Luedtke  
Notary Public Iosco County, Mich.

My Commission Expires:

SHIRLEY R. LUEDTKE  
Notary Public, Iosco County, Michigan  
My Commission Expires June 18, 1977



DESCRIPTION

Twenty-three (23) Pullman-Standard 70 ton, 50'6"  
Outside Post, Single Sheath Box Cars, Series Number  
2250-2272.

ATTACHMENT A

SCHEDULE OF RENTAL PAYMENTS

DAYS

PRIMARY TERM

AMOUNT PER DAY

1 - 1825

\$14.97

EXTENSION TERM

1826 - 3650

\$12.00